

**STATE OF INDIANA
BEFORE THE ALCOHOL & TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
KROGER LIMITED PARTNERSHIP I)	
d/b/a JAY-C PLUS #83)	PERMIT NO. DL40-21667
PO BOX 1004)	
SEYMOUR, INDIANA 47274)	
)	
Permittee.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant, Kroger Limited Partnership, d/b/a Jay-C Plus #83 ("Jay-C"), P.O. Box 1004, Seymour, Indiana, 47274, is an applicant for Type 208 Alcohol and Tobacco Commission ("ATC") permit (the "Permit").
2. The application was assigned to the Alcoholic Beverage Board ("Local Board") of Jennings County.
3. The Local Board held hearings on May 16, 2005 and voted 2-1 to deny the application based on a finding that (i) there is no need for such services at the location of the permit; and (ii) there is no desire of the neighborhood or community to receive such services. 905 I.A.C. 1-27-5.
4. The ATC adopted the Local Board's recommendation.
5. The Applicant filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge U-Jung Choe ("Hearing Judge").
6. The matter was set for hearing and at that time, witnesses were sworn, evidence was heard and the matter was taken under advisement.

CONCLUSIONS OF LAW

1. The ATC shall follow the recommendation of a local board unless, after review, the ATC determines one of the exceptions enumerated in Ind. Code § 7.1-3-19-11 applies.

2. Under 905 IAC 1-27-4, the Local Board must consider community need and desire in reaching their decision. The Local Board considered the evidence before it and based its decision on that evidence. (Local Board Hearing).

3. The decision of the Local Board to deny the Permit was based upon substantial evidence and was neither arbitrary nor capricious. The Local Board heard testimony and reviewed petitions submitted by the Applicant and Remonstrators regarding the community's need or desire for the grant of the Permit to the Applicant.

4. The Hearing Judge, having reviewed the tape-recorded transcript of the Local Board hearing, the evidence submitted to the ATC during the appeal hearing, and contents of the entire ATC file, finds no exception has been revealed which would suggest the Local Board's decision should be overruled.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Local Board in denying the applications for Permit DL40-21667 shall be sustained. The appeals of Applicant, Kroger Limited Partnership I, d/b/a Jay -C Plus #83, for a Type 208 ATC permit is denied, the recommendation of the Local Board in this matter is affirmed, and Permit No. DL40-21667 applied for herein is DENIED.

DATED: April 11, 2005

U-Jung Choe, Hearing Judge

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